A

ABDUL HAKIM ABDUL WAHID v. MAS ERMIEYATI SAMSUDIN & ANOTHER APPEAL

FEDERAL COURT, PUTRAJAYA
TENGKU MAIMUN TUAN MAT CJ
HASNAH MOHAMMED HASHIM FCJ
B NORDIN HASSAN FCJ
[CIVIL APPEAL NOS: 01(i)-4-02-2023(M) & 02(i)-13-02-2023(T)]
14 JUNE 2023

C **Abstract** – *(i) Proviso (a) of s. 38(1) of the Election Offences Act 1954 ('EOA') applies to any election petition on grounds of corrupt practice and payment of monies after the date of the publication of the election's result in the Gazette. In such cases, the election petition can be filed within 28 days after the date of such payment or act. This is also consistent with s. 10 of the EOA which makes it an offence for bribery* D *even after an election if such action induced the voters to vote for a particular candidate and refrain them from voting for other candidates. Proviso (a) of s. 38(1) must be read together with s. 38(1), as the section must apply before the proviso of the section can have any application; (ii) An election petition must contain facts and grounds that are sufficient* E *to constitute a cause of action of the offence of treating under s. 8 of the EOA and offence of bribery under s. 10 of the EOA. When a place, time and date, along with the names of the agents involved in the corrupt practices of an election candidate and names of voters who allegedly received the bribe monies has been pleaded, the petition has not suffered* F *any defect or insufficient material facts that infringes r. 4(1)(b) of the Election Petition Rules 1954. The requirements of s. 32(a) and (c) of the EOA, therefore, are fulfilled.*

G ***ELECTION:*** *Petition – Presentation – Timeline – Filing of petition under s. 32(a) and (c) of Election Offences Act 1954 ('EOA') for election to be declared void – Whether filed out of time – Whether in breach of s. 38(1)(a) and s. 38(1)(b)(ii) of EOA*

H ***ELECTION:*** *Petition – Pleading of facts – Whether petition lacked sufficient materials – Whether grounds pleaded sufficient to constitute cause of action on offence of bribery under s. 10(a) of Election Offences Act 1954 ('EOA') – Whether there was ambiguity in charges – Whether offence of treating under s. 8 of EOA established – Whether petition infringed r. 4(1)(b) of Election Petition Rules 1954 – Whether fulfilled requirements of s. 32(a) and (c) of EOA*

I Two appeals were argued together herein concerning the decisions of the election judges in allowing the respondents' preliminary objections and striking out the election petitions filed by the applicants. The appeals were

(i) *Abdul Hakim Abdul Wahid v. Mas Ermieyati Samsudin* – Parliament Constituency of Masjid Tanah, Melaka ('Masjid Tanah's appeal'); and (ii) *Wan Mohamad Hisham Wan Abdul Hamid v. Che Alias Hamid* – Parliamentary Constituency of Kemaman, Terengganu ('Kemaman's appeal'). In the Masjid Tanah's appeal, the appellant was a Barisan Nasional ('BN') candidate who stood for election in the 15th General Election ('GE15') for the Parliamentary Constituency of Masjid Tanah, Melaka. The appellant obtained 21,193 votes whilst the respondent garnered 25,604 votes and was declared the winner of the Masjid Tanah seat. The appellant filed an election petition at the High Court under s. 32(a) and (c) of the Election Offences Act 1954 ('EOA'), seeking, *inter alia,* declarations that the respondent was not duly elected in the GE15 for the Parliamentary Constituency of Masjid Tanah and that the said election be declared void. Section 32(a) of the EOA provides that the election of a candidate at any election shall be declared void on an election petition on grounds, *inter alia*, of general bribery or general treating that affects the result of the election whilst s. 32(c) on grounds of corrupt practice or illegal practice by the candidate or his agent. In the election petition, the appellant stated that the respondent committed an act of bribery during the election by giving monies or valuable consideration to voters to induce the voters to vote for the respondent and refrain from voting for other candidates. Further, it was stated that the agent of the respondent had committed bribery by doing the same act where both actions were offences under s. 10(a), (c), (d), (e), (g) or (h) of the EOA and punishable under s. 11(1)(b) of the same Act. The election petition further stated that the respondent committed an act of treating the voters to corruptly influence them to vote for the respondent and refrain from voting for the appellant. It was also alleged that the agent of the respondent had committed the same act which was an offence under s. 8 of the EOA and punishable under s. 11(1)(b) of the same Act. The respondent filed a notice of preliminary objection for the election petition. The election judge, in allowing the preliminary objection and striking out the election petition, held that the election petition was filed out of time, as it was in breach of s. 38(1)(a) and s. 38(1)(b) and that there was non-compliance with s. 32(a) and (c) of the EOA and r. 4(1)(b) of the Election Petition Rules 1954 ('EPR'). In the Kemaman Appeal, the appellant was a registered voter and election agent for a BN candidate for the GE15 for the Parliamentary Constituency of Kemaman. The respondent, a candidate from Parti Islam SeMalaysia ('PAS'), was declared the winner in the election with a majority of 27,179 votes. The appellant filed an election petition under s. 32(c) of the EOA for corrupt practices allegedly committed by the respondent's agent. The appellant stated that the respondent committed an act of bribery by giving monies to the voters to induce them to vote for the respondent and to refrain from voting for other candidates. The appellant alleged that the agent of the respondent also committed the same act and both actions were an offence under s. 10(a) of the EOA and punishable under s. 11(1)(b) of the same Act. In the election petition, the appellant prayed for declarations that the

A respondent was not duly elected in the GE15 for the Parliamentary Constituency of Kemaman and that the said election was to be declared void. Thereafter, the respondent raised a preliminary objection to the election petition before the election judge. Based on the non-compliance of s. 32(a) of the EOA and r. 4(1)(b) of the EPR, the election judge allowed the B respondent's preliminary objection and struck out the appellant's election petition. Hence, the appeals. In the Masjid Tanah's appeal, the issues raised by the appellant were the timeline for the presentation of the election petition under s. 38(1) of the EOA and the sufficiency of the material facts and grounds relied on in the petition under s. 32(a) and (c) of the EOA and C r. 4(1)(b) of the EPR. In the Kemaman appeal, the appellant's appeal concerned only one issue which was the sufficiency of the material facts and grounds relied upon in the election petition. The issue was whether the requirement of r. 4(1)(b) of the EPR had been complied with.

Held (allowing appeals)

D **Per Nordin Hassan FCJ delivering the judgment of the court:**

(1) The statutory requirements of election law are mandatory and must be observed strictly because the parties' rights in the election and election dispute are governed by statute or special law unknown to common law or equity. Therefore, an election petition filed by the petitioner must E comply or adhere strictly to the statutory requirements of the election law, failing which, the petition is defective and subject to be struck out without going for a full hearing in a trial. (paras 36 & 37)

(2) The plain meaning in s. 38(1) of the EOA is that every election petition be filed within 21 days of the date of publication of the election result F in the *Gazette*. However, there is proviso (a) of s. 38(1) of the Act which involves corrupt practice and payment of monies, allowing the presentation of the election petition within 28 days from the date of the payment or act. This court was not inclined to agree with the election judge in Masjid Tanah's appeal that proviso (a) of s. 38(1) of the EOA G must be read independently of the said section. The section must apply before the proviso of the section can have any application. Both must be read together. The proviso of a section must not be read in isolation from the said section. (paras 41, 46 & 47)

(3) The words of proviso (a) of s. 38(1) of the EOA, *inter alia,* provides that H an election petition on grounds of corrupt practice and payment of money made or done since the date aforesaid must be filed within 28 days after the date of the payment or act. The keywords are the payment or act done 'since the date aforesaid.' Reading the proviso together with s. 38(1) of the EOA, which states that every election I petition must be filed within 21 days of the date of publication of the result of the election in the *Gazette*, it is undoubtedly that the words 'since the date aforesaid' in proviso (a) refer to the date of publication of the election's result in the *Gazette*. It is the duty of the court to give

effect to the words in the proviso as enacted by Parliament, otherwise the words 'since the date aforesaid' are meaningless or otiose. Certainly, Parliament does not legislate or act in vain. (paras 49 & 50)

(4) Proviso (a) of s. 38(1) of the EOA applies to any election petition on grounds of corrupt practice and payment of monies after the date of the publication of the election's result in the *Gazette*. In such cases, the election petition can be filed within 28 days after the date of such payment or act. This was also consistent with s. 10 of the EOA which makes it an offence for bribery, even after an election, if such action induced the voters to vote for the respondent and refrain them from voting for other candidates. Therefore, the issue of redundancy about proviso (a) of s. 38(1) of the EOA as opined by the election judge did not arise. (paras 51 & 52)

(5) In the present appeal, the date of publication of the results of the election in the *Gazette* was 14 December 2022 and the election petition was filed on 3 January 2023. As such, the petition was filed within 21 days after the said publication as required under s. 38(1). In the circumstances, the election judge erred in applying proviso (a) of s. 38(1) and taking into account the alleged bribery on 19 November 2022, the 28 days ended on 17 December 2022, and therefore ruled that the filing of the election petition on 3 January 2023 was out of time. (para 53)

(6) In respect of Masjid Tanah's appeal, the pleaded facts for the alleged bribery offence by the respondent or with her knowledge or with her consent or through her agents were laid down in the election petition. The material allegation of facts was that on 19 November 2022, between 9am to 5pm, payment of monies of either RM50, RM100 or RM300 were given to the registered voters of the Masjid Tanah Parliamentary Constituency by the respondent or with her consent or knowledge or upon her instruction, the purpose of which was to induce the voters to vote for the respondent. The facts and grounds pleaded were sufficient to constitute a cause of action on the offence of bribery under s. 10(a) of the EOA. All the necessary elements for the said offence had been pleaded which were, at the date, time and place, the respondent and through her agent had given monies to the registered voters of the Masjid Tanah Parliamentary Constituency to induce them to vote for the respondent. There was no ambiguity in the charges against the respondent for the respondent to answer the case against her in the trial. Thus, the election judge had erred on this issue. (paras 57, 58 & 62)

(7) The material facts that could be gleaned from the election petition were that the respondent or through her agent had organised a feast and provided food and other valuable consideration for the registered voters of the Masjid Tanah Parliamentary Constituency to corruptly influence the voters to vote for the respondent. The place, time and date were pleaded and three registered voters who attended the feast were

specifically mentioned. The material facts pleaded in the election petition, if proven, were sufficient to establish the offence of treating under s. 8 of the EOA. All the elements of the offence of treating and how the offence was allegedly committed were sufficiently pleaded. The appellant's election petition had not suffered any defect of insufficient material facts or grounds that infringed r. 4(1)(b) of the EPR and fulfilled the requirements of s. 32(a) and (c) of the EOA. As such, the election judge erred in his decision that there were insufficient material particulars in the appellant's petition. (paras 64-66)

(8) Two agents of the respondent were named in the petition and the pleadings detailed their involvement in the corrupt practice as agents of the respondent. The offences of treating under s. 8 of the EOA and bribery under s. 10 of the same Act, *inter alia*, made it an offence for every person who corruptly, by himself or by any other person, to commit the corrupt practice. What was pleaded in the petition, *inter alia*, was that the corrupt practices were committed not only by the respondent but by other persons that were the agents of the respondent. The material facts were sufficiently pleaded for the respondent to answer the case against her under ss. 8 and 10 of the EOA. In the circumstances, whether the two individuals named were the respondent's agents with the express consent or by necessary implication were matters of evidence to be established during the trial and evidence need not be stated in the election petition as provided under r. 5 of the EPR. There was no requirement under the election law in particular r. 4(1)(b) of the EPR that the election petition must contain the particulars of how the petitioner's agent was appointed. What was required, *inter alia*, was to state briefly the facts and grounds relied on to sustain the prayer. Thus, if there was no such requirement, there could not be any breach of the law. Having considered the petition in totality, the petition did confine to a distinct portion of the subject. As such, the contention that the petition infringed r. 4(2) of the EPR was without merit. (paras 68-75)

(9) In the Kemaman's appeal, the missing link to establish the cause of action against the respondent for the offence of bribery under s. 10 of the EOA was the failure to identify the alleged agents of the respondent. As s. 10, *inter alia*, makes it an offence for the respondent by any other person, including the agents, to give bribe monies, a close nexus or relationship between the agent and the respondent needed to be shown. The identity of the agent had to be pleaded to enable the respondent to answer the allegation and the opportunity to refute them for being the respondent's agent. The omission to name the respondent's agent made the facts pleaded insufficient to sustain the prayer required under r. 4(1)(b) of the EPR. (para 78)

(10) In the election petition, there were other corrupt practices pleaded, which essentially alleged that the respondent and his agents had given bribe monies to the voters in several ceremonies held in the Parliamentary Constituency of Kemaman to induce the voters to vote for the respondent. In respect of all the ceremonies alluded to in the petition, except 'Program Bersama Menteri Besar Terengganu', the elements of bribery and agency were pleaded sufficiently. The time, place and the respondent's agent had been named. The payments of monies to the registered voters to induce them to vote for the respondent were also specified clearly. Further, the group of receivers of the alleged corrupt payments had also been identified, they were the attendees of the respective event. The case against the respondent was clearly pleaded and could be answered by the respondent without any confusion or difficulty. (para 81)

Bahasa Melayu *Headnotes*

Dua rayuan dibicarakan bersama tentang keputusan hakim pilihan raya membenarkan bantahan awalan responden dan membatalkan petisyen pilihan raya yang difailkan oleh pemohon-pemohon. Rayuan-rayuan tersebut adalah: (i) *Abdul Hakim Abdul Wahid lwn. Mas Ermieyati Samsudin* – Kawasan Parlimen Masjid Tanah, Melaka ('Rayuan Masjid Tanah'); dan (ii) *Wan Mohamad Hisham Wan Abdul Hamid v. Che Alias Hamid* – Kawasan Parlimen Kemaman, Terengganu ('Rayuan Kemaman'). Dalam rayuan Masjid Tanah, perayu adalah calon Barisan Nasional ('BN') yang mencalonkan dirinya dalam Pilihan Raya Umum ke-15 ('PRU15') untuk Kawasan Parlimen Masjid Tanah, Melaka. Perayu memperoleh 21,193 undi sementara responden memperoleh 25,604 undi dan diisytiharkan sebagai pemenang kerusi Masjid Tanah. Perayu mengemukakan petisyen pilihan raya di Mahkamah Tinggi bawah s. 32(a) dan (c) Akta Kesalahan Pilihan Raya 1954 ('AKP'), menuntut, antara lain, perisytiharan bahawa responden tidak dipilih dengan sewajarnya pada PRU15 untuk Kawasan Parlimen Masjid Tanah dan bahawa pilihan raya tersebut tidak sah. Seksyen 32(a) AKP memperuntukkan bahawa pemilihan calon pada setiap pilihan raya akan diisytiharkan batal dalam petisyen pilihan raya dengan alasan, antara lain, rasuah umum atau perlakuan umum yang mempengaruhi keputusan pilihan raya, sementara s. 32(c) atas alasan amalan rasuah atau amalan haram oleh calon atau ejennya. Dalam petisyen pilihan raya, perayu menyatakan bahawa responden melakukan tindakan rasuah semasa pilihan raya dengan memberikan wang atau balasan bernilai kepada pengundi-pengundi untuk mendorong pengundi-pengundi mengundi responden dan tidak mengundi calon lain. Selanjutnya, dinyatakan bahawa ejen responden telah melakukan perbuatan rasuah dengan membuat tindakan sama dan kedua-dua tindakan tersebut adalah kesalahan bawah s. 10(a), (c), (d), (e), (g) atau (h) AKP yang boleh dihukum bawah s. 11(1)(b) Akta yang sama. Petisyen pilihan raya selanjutnya menyatakan bahawa responden melakukan tindakan mempengaruhi pengundi-pengundi

A secara korup untuk mengundi responden dan menahan diri daripada mengundi perayu. Juga didakwa bahawa ejen responden telah melakukan tindakan yang sama, satu kesalahan bawah s. 8 AKP dan boleh dihukum bawah s. 11(1)(b) Akta yang sama. Responden mengemukakan notis bantahan awalan terhadap petisyen pilihan raya. Hakim pilihan raya, semasa
B membenarkan bantahan awalan dan membatalkan petisyen pilihan raya, memutuskan bahawa petisyen pilihan raya difailkan di luar masa kerana melanggar s. 38(1)(a) dan s. 38(1)(b)(ii) dan bahawa terdapat ketidakpatuhan s. 32(a) dan (c) dan k. 4(1)(b) Kaedah-kaedah Petisyen Pilihan Raya 1954 ('KKPP'). Dalam Rayuan Kemaman, perayu adalah pengundi berdaftar dan
C ejen pilihan raya untuk calon BN dalam PRU15 di Kawasan Parlimen Kemaman. Responden, calon Parti Islam SeMalaysia ('PAS'), diisytiharkan sebagai pemenang pilihan raya dengan undi majoriti 27,179. Perayu memfailkan petisyen pilihan raya bawah s. 32(c) AKP untuk amalan rasuah yang didakwa dilakukan oleh ejen responden. Perayu menyatakan bahawa
D responden melakukan tindakan rasuah dengan memberi wang kepada pengundi-pengundi untuk mendorong mereka mengundi responden dan tidak mengundi calon lain. Perayu mendakwa bahawa ejen responden juga melakukan perbuatan yang sama dan kedua-dua tindakan tersebut adalah kesalahan bawah s. 10(a) AKP dan boleh dihukum bawah s. 11(1)(b) Akta yang sama. Dalam petisyen pilihan raya, perayu menuntut perisytiharan
E bahawa responden tidak dipilih dengan sewajarnya pada PRU15 untuk Kawasan Parlimen Kemaman dan bahawa pilihan raya tersebut tidak sah. Selepas itu, responden mengemukakan bantahan awalan terhadap petisyen pilihan raya di hadapan hakim pilihan raya. Berdasarkan ketidakpatuhan s. 32(a) AKP dan k. 4(1)(b) KKPP, hakim pilihan raya membenarkan
F bantahan awalan responden dan membatalkan petisyen pilihan raya perayu. Oleh itu, rayuan-rayuan ini. Dalam rayuan Masjid Tanah, isu-isu yang dibangkitkan oleh perayu adalah garis masa pengemukaan petisyen pilihan raya bawah s. 38(1) AKP dan kecukupan fakta-fakta serta alasan-alasan material yang dirujuk dalam petisyen bawah s. 32(a) dan (c) AKP dan
G k. 4(1)(b) KKPP. Dalam rayuan Kemaman, rayuan perayu hanya tentang satu isu, iaitu, kecukupan fakta-fakta dan alasan-alasan material yang dirujuk dalam petisyen pilihan raya. Isu yang timbul adalah sama ada k. 4(1)(b) KKPP dipatuhi.

Diputuskan (membenarkan rayuan-rayuan)

H **Oleh Nordin Hassan HMP menyampaikan penghakiman mahkamah:**

(1) Peruntukan statutori undang-undang pilihan raya adalah mandatori dan harus dipatuhi dengan ketat kerana hak pihak-pihak dalam pilihan raya dan pertikaian pilihan raya tertakluk pada statut atau undang-undang khas yang berbeza dengan common law atau undang-undang ekuiti. Oleh
I itu, petisyen pilihan raya yang difailkan oleh pempetisyen harus mematuhi dengan ketat peruntukan statutori undang-undang pilihan raya, dan jika tidak, petisyen itu cacat dan boleh dibatalkan tanpa perbicaraan penuh.

(2) Maksud jelas s. 38(1) AKP ialah setiap petisyen pilihan raya perlu difailkan dalam tempoh 21 hari dari tarikh penerbitan keputusan pilihan raya dalam Warta. Walau bagaimanapun, terdapat proviso (a) s. 38(1) Akta yang melibatkan amalan rasuah dan pembayaran wang, yang membenarkan pengemukaan petisyen pilihan raya dalam tempoh 28 hari dari tarikh pembayaran atau tindakan tersebut. Mahkamah ini tidak cenderung untuk bersetuju dengan hakim pilihan raya dalam rayuan Masjid Tanah bahawa proviso (a) s. 38(1) AKP mesti dibaca berasingan daripada seksyen tersebut. Seksyen itu mesti diguna pakai sebelum peruntukan seksyen itu boleh digunakan. Kedua-duanya mesti dibaca bersama-sama. Proviso dalam satu-satu seksyen tidak boleh dibaca berasingan daripada seksyen tersebut.

(3) Perkataan-perkataan dalam proviso (a) s. 38(1) AKP, antara lain, memperuntukkan bahawa petisyen pilihan raya atas alasan amalan rasuah dan pembayaran wang yang dibuat atau dilakukan semenjak tarikh yang disebut terdahulu mesti difailkan dalam masa 28 hari selepas tarikh pembayaran atau tindakan tersebut. Kata kunci adalah pembayaran atau tindakan yang dilakukan 'semenjak tarikh yang disebut terdahulu.' Membaca peruntukan itu bersama-sama dengan s. 38(1) AKP, yang menyatakan bahawa setiap petisyen pilihan raya harus difailkan dalam tempoh 21 hari dari tarikh penerbitan keputusan dalam Warta, tidak diragukan lagi bahawa perkataan-perkataan 'semenjak tarikh yang disebut terdahulu' dalam proviso (a) merujuk pada tarikh penerbitan keputusan pilihan raya dalam Warta. Mahkamah berkewajiban untuk memberi kesan pada kata-kata dalam proviso itu seperti yang dilakukan oleh Parlimen, jika tidak, perkataan-perkataan 'semenjak tarikh yang disebut terdahulu' tidak bermakna atau otiose. Pastinya Parlimen tidak menggubal undang-undang atau bertindak dengan sia-sia.

(4) Proviso (a) s. 38(1) AKP terpakai dalam apa-apa petisyen pilihan raya atas alasan amalan rasuah dan bayaran wang selepas tarikh penerbitan keputusan pilihan raya dalam Warta. Dalam kes sedemikian, petisyen pilihan raya boleh difailkan dalam tempoh 28 hari selepas tarikh bayaran atau tindakan tersebut. Ini juga selaras dengan s. 10 AKP yang menjadikan rasuah satu kesalahan, walaupun selepas pilihan raya, jika tindakan sedemikian mendorong pengundi-pengundi untuk mengundi responden dan mereka dihalang daripada mengundi calon lain. Oleh itu, isu lebihan proviso (a) s. 38(1) AKP seperti yang diputuskan oleh hakim pilihan raya tidak timbul.

(5) Dalam rayuan ini, tarikh penerbitan keputusan pilihan raya dalam Warta adalah 14 Disember 2022 dan petisyen pilihan raya difailkan pada 3 Januari 2023. Oleh itu, petisyen tersebut difailkan dalam tempoh 21 hari selepas penerbitan tersebut sebagaimana yang disyaratkan bawah

A s. 38(1). Dalam keadaan itu, hakim pilihan raya terkhilaf apabila mengguna pakai proviso (a) s. 38(1) dan mengambil kira dakwaan rasuah pada 19 November 2022, 28 hari berakhir pada 17 Disember 2022, dan oleh itu memutuskan bahawa pemfailan petisyen pilihan raya pada 3 Januari 2023 adalah di luar had masa.

B **(6)** Berkenaan dengan rayuan Masjid Tanah, fakta yang diplidkan tentang dakwaan kesalahan rasuah oleh responden atau dengan pengetahuannya atau dengan persetujuannya atau melalui ejennya telah dinyatakan dalam petisyen pilihan raya. Dakwaan fakta material ialah pada 19 November 2022, antara pukul 9 pagi hingga 5 petang, pembayaran wang, sama ada
C RM50, RM100 atau RM300, telah diberikan kepada pengundi-pengundi berdaftar Kawasan Parlimen Masjid Tanah oleh responden atau dengan persetujuan atau pengetahuannya atau atas arahan beliau, bertujuan mendorong pengundi-pengundi mengundi responden. Fakta-fakta dan alasan-alasan yang diplidkan adalah mencukupi untuk membentuk kausa
D tindakan terhadap kesalahan rasuah bawah s. 10(a) AKP. Semua elemen-elemen yang diperlukan untuk kesalahan tersebut telah diplidkan iaitu tarikh, masa dan tempat responden dan melalui ejennya telah memberikan wang kepada pengundi-pengundi berdaftar di Kawasan Parlimen Masjid Tanah untuk mendorong mereka mengundi responden.
E Tiada kekaburan dalam pertuduhan-pertuduhan terhadap responden seperti yang diplidkan untuk responden menjawab kes terhadapnya dalam perbicaraan. Oleh itu, hakim pilihan raya telah terkhilaf dalam isu ini.

(7) Fakta-fakta material yang dapat dikumpulkan daripada petisyen pilihan
F raya adalah bahawa responden atau melalui ejennya telah mengadakan kenduri dan menyediakan makanan dan balasan bernilai lain untuk pengundi-pengundi berdaftar di Kawasan Parlimen Masjid Tanah untuk mempengaruhi pengundi-pengundi secara korup untuk mengundi responden. Tempat, waktu dan tarikh telah diplidkan dan tiga pengundi-
G pengundi berdaftar yang menghadiri kenduri itu disebutkan secara khusus. Fakta-fakta material yang diplidkan dalam petisyen pilihan raya, jika terbukti, cukup untuk membuktikan kesalahan penjamuan bawah s. 8 AKP. Semua unsur-unsur kesalahan penjamuan dan bagaimana kesalahan itu didakwa dilaksanakan telah diplidkan dengan secukupnya. Petisyen pilihan raya perayu tidak mengalami kecacatan
H fakta atau alasan material yang tidak mencukupi yang melanggar k. 4(1)(b) KKPP dan memenuhi syarat s. 32(a) dan (c) AKP. Dengan itu, hakim pilihan raya terkhilaf apabila memutuskan bahawa butir-butir material tidak mencukupi dalam petisyen perayu.

I **(8)** Dua ejen responden dinamakan dalam petisyen dan permohonan tersebut memperincikan penglibatan mereka dalam amalan rasuah sebagai ejen responden. Kesalahan penjamuan bawah s. 8 AKP dan

rasuah bawah s. 10 Akta yang sama, antara lain, menjadikannya suatu kesalahan bagi setiap orang yang melakukan rasuah, dengan sendiri atau melalui mana-mana orang lain, melaksanakan amalan rasuah. Apa yang diplidkan dalam petisyen itu, antara lain, adalah bahawa amalan rasuah dilakukan bukan hanya oleh responden tetapi oleh orang lain yang menjadi ejen responden. Fakta material telah dirayu secukupnya untuk responden menjawab kes terhadapnya bawah ss. 8 dan 10 AKP. Dalam keadaan itu, sama ada dua individu yang dinamakan itu adalah ejen responden dengan kebenaran nyata atau dengan implikasi yang diperlukan adalah perkara bukti yang perlu diwujudkan semasa perbicaraan dan keterangan tidak perlu dinyatakan dalam petisyen pilihan raya seperti yang diperuntukkan bawah k. 5 KKPP. Tiada keperluan bawah undang-undang pilihan raya khususnya k. 4(1)(b) KKPP bahawa petisyen pilihan raya mesti mengandungi butir-butir bagaimana ejen pempetisyen dilantik. Apa yang diperlukan, antara lain, adalah untuk menyatakan secara ringkas fakta dan alasan yang boleh dipercayai untuk mengekalkan tuntutan. Oleh itu, jika tiada keperluan sedemikian, tidak mungkin berlaku sebarang pelanggaran undang-undang. Setelah mempertimbangkan petisyen secara keseluruhan, petisyen itu terhad pada bahagian subjek yang tersendiri. Oleh itu, dakwaan bahawa petisyen itu melanggar k. 4(2) KKPP adalah tanpa merit.

(9) Dalam rayuan Kemaman, pautan yang tertinggal untuk mewujudkan kausa tindakan terhadap responden untuk kesalahan rasuah bawah s. 10 AKP adalah kegagalan mengenal pasti ejen responden yang didakwa. Oleh sebab s. 10, antara lain, menjadikan satu kesalahan untuk responden, melalui orang lain, termasuk ejen, memberi wang rasuah, pertalian atau hubungan rapat antara ejen dan responden perlu dibuktikan. Identiti ejen terpaksa diplidkan untuk membolehkan responden menjawab dakwaan dan peluang untuk menyangkal mereka adalah ejen responden. Peninggalan untuk menamakan ejen responden menjadikan fakta yang diplidkan tidak mencukupi untuk mengekalkan tuntutan yang diperlukan bawah k. 4(1)(b) KKPP.

(10) Dalam petisyen pilihan raya, ada tindakan-tindakan rasuah lain yang diplidkan, yang pada dasarnya mendakwa bahawa responden dan ejennya telah memberikan wang rasuah kepada para pengundi dalam beberapa upacara yang diadakan di Kawasan Parlimen Kemaman untuk mendorong para pengundi mengundi responden. Sehubungan dengan semua upacara yang disebutkan dalam petisyen, kecuali Program 'Bersama Menteri Besar Terengganu', unsur-unsur rasuah dan agensi diplidkan dengan secukupnya. Masa, tempat dan ejen responden telah dinamakan. Pembayaran wang kepada pengundi-pengundi berdaftar

untuk mendorong mereka mengundi responden juga dinyatakan dengan jelas. Selanjutnya, kumpulan penerima pembayaran yang didakwa korup juga telah dikenal pasti, mereka adalah peserta upacara masing-masing. Kes terhadap responden jelas diplidkan dan dapat dijawab oleh responden tanpa kekeliruan atau kesulitan

Case(s) referred to:

Abdul Hakim Abdul Wahid v. Mas Ermieyati Samsudin [2023] 6 CLJ 667 FC ***(refd)***
Ahmad Jamaluddin Abd Majid v. Rafidah Aziz & Ors [2009] 2 CLJ 785 FC ***(refd)***
Ali Amberan v. Tunku Abdullah [1969] 1 LNS 6 HC ***(refd)***
Ang Thye Chin lwn. Chua Kow & Lagi [1996] 1 CLJ 49 HC ***(refd)***
Asmara Abdul Rahman v. Musa Aman & Ors [2019] 1 CLJ 75 HC ***(refd)***
Chor Phaik Har v. Farlim Properties Sdn Bhd [1994] 4 CLJ 285 FC ***(refd)***
Dato' Ismail Kamus v. Pegawai Pengurus Pilihanraya (Zainal Abidin Azim) & Ors [2005] 2 CLJ 237 FC ***(refd)***
Foo Loke Ying & Anor v. Television Broadcasts Ltd & Ors [1985] 1 CLJ 511; [1985] CLJ (Rep) 122 SC ***(refd)***
Gan Joon Zin v. Fong Kui Lun & Ors [2004] 4 CLJ 729 FC ***(refd)***
Gubay v. Kington [1984] 1 WLR 163 ***(refd)***
Jennings And Another v. Kelly [1940] AC 206 ***(refd)***
Khairuddin Abu Hassan v. Datuk Seri Hj Ahmad Hamzah & Ors And Another Appeal [2019] 9 CLJ 315 FC ***(refd)***
Lee Kew Sang v. Timbalan Menteri Dalam Negeri, Malaysia & Ors [2005] 3 CLJ 914 FC ***(refd)***
Mahari Endut v. Dato' Hj Mat Razali Kassim, Pegawai Pengurus Pilihan Raya Bagi Kawasan Dewan Undangan Negeri N15 Ladang & Ors [2009] 4 CLJ 488 FC ***(refd)***
Mahdi Hassan v. Ahmad Zahid Hamidi [2014] 1 LNS 183 HC ***(refd)***
Mohamad Ali Mohamad v. Dr Mohd Aleef Yusof & Ors [2022] 1 LNS 410 HC ***(refd)***
Mohamad Sazali Kamilan v. Nurul Izzah Anwar & Ors [2013] 9 CLJ 782 HC ***(refd)***
Mohd Nazri Hj Din v. Dato' Seri Raja Ahmad Zainuddin Raja Hj Omar & Ors [2009] 3 CLJ 221 FC ***(refd)***
Mohd Zaid Ibrahim v. P Kamalananthan Panchanathan & Ors [2010] 8 CLJ 608 HC ***(refd)***
Raymond Ahuar v. Arthur Joseph Kurup & Ors [2018] 1 LNS 1914 HC ***(refd)***
Re Pengkalan Kota Bye-Election Teoh Teik Huat v. Lim Kean Siew & Anor [1981] 1 LNS 1 ***(refd)***
Sani Miasin v. Yusof & Ors [2021] 1 LNS 62 HC ***(refd)***
Tan Sri Eric Chia Eng Hock v. PP [2007] 1 CLJ 565 FC ***(refd)***
Tan Sri Joseph Kurup v. Danny Anthony Andipai; Attorney General, Malaysia (Intervener) [2009] 3 CLJ 523 FC ***(refd)***
Wan Sagar Wan Embong v. Harun Taib [2008] 5 CLJ 14 FC ***(dist)***
Yusuf Abdul Rahman v. Abdul Ajis Abdul Majeed & Anor [2000] 5 CLJ 215 HC ***(refd)***

Legislation referred to:

Election Offences Act 1954, ss. 8, 10(a), (c), (d), (e), (g), (h), 11(1)(b), 32(a), (b), (c), (d), (e), 38(1)(a), (b)(ii)
Election Petition Rules 1954, rr. 4(1)(b), (2), 5, 9, 15(1)

Other source(s) referred to:
Bennion On Statutory Interpretation, 5th edn, pp 723, 725

(Civil Appeal No: 01(i)-4-02-2023(M))
For the appellant - Mohd Hafarizam Harun, Rosfinah Rahmat, Mohd Khairul Nizam Abdul Kadir, Wan Hamidah Wan Ismail, Norhazira Abu Haiyan & Muhammad Amin Othman; M/s Rosfinah & Co
For the respondent - Yusrizal Yusoff, Mohd Faizi Che Abu, Wan Rohimi Wan Daud & Ahmad Lutfi Awang; M/s Tengku Amalin & Faizi

(Civil Appeal No: (01(i)-13-02-2023(T))
For the appellant - Mohd Hafarizam Harun; Abu Bakar Isa Ramat, Mohamed Baharudeen Mohamed Ariff, Norhazira Abu Haiyan & Muhammad Amin Othman; M/s Hafarizam Wan & Aisha Mubarak
For the respondent - Wan Rohimi Wan Daud, Saiffuddin Othman & Mohd Faizi Che Abu; M/s Wan Abd Muttalib

[Editor's note: Appeal from High Court, Melaka; Election Petition No: MA-26PP-1-01-2023 (overruled).]

Reported by Suhainah Wahiduddin

JUDGMENT

Nordin Hassan FCJ:

Introduction

[1] On 2 May 2023, two appeals were argued together before us concerning the decisions of the election judges in allowing the respondents' preliminary objections and striking out the election petitions filed by the applicants. The appeals are as follows:

(i) *Abdul Hakim Abdul Wahid v. Mas Ermieyati Samsudin* [2023] 6 CLJ 667 (Appeal No. 01(i)-4-02-2023(M)) – Parliamentary Constituency of Masjid Tanah, Melaka ("The Masjid Tanah's appeal").

(ii) *Wan Mohammad Hisham Wan Abdul Hamid v. Che Alias Hamid* [2023] 6 CLJ 667 (Appeal No. 02(i)-13-02-2023(T)) – Parliamentary Constituency of Kemaman, Terengganu ("The Kemaman's appeal").

[2] Having considered the appeal records and the parties' written as well as oral submissions in both appeals, we unanimously allowed both appeals. Our analysis and reasons are as follows.

The Background Facts

The Masjid Tanah's Appeal

[3] Abdul Hakim bin Abdul Wahid, the appellant, was a Barisan Nasional ("BN") candidate who stood for election in the 15th General Election ("GE15") for the Parliamentary Constituency of Masjid Tanah, Melaka ("P134"). The GE15 was held on 19 November 2022 with three other

candidates including the respondent from Perikatan Nasional ("PN"). The appellant obtained 21,193 votes whilst the respondent garnered 25,604 votes and declared as the winner of the Masjid Tanah seat with a majority of 4,411 votes.

[4] On 14 December 2022, the results of the GE15 were published in the *Gazette*.

[5] On 3 January 2023, the appellant filed an election petition at the Melaka High Court under s. 32(a) and (c) of the Election Offences Act 1954 ("EOA"). In the election petition, the appellant sought for, *inter alia*, declarations that the respondent was not duly elected in the GE15 for the Parliamentary Constituency of Masjid Tanah and that the said election be declared void.

[6] Section 32(a) of the EOA provides that the election of a candidate at any election shall be declared void on an election petition on grounds, *inter alia*, of general bribery or general treating that affects the result of the election whilst s. 32(c), on grounds of corrupt practice or illegal practice by the candidate or his agent.

[7] In paras. 4.1 and 5.1 of the election petition, the appellant states that the respondent committed an act of bribery during the election by giving monies or valuable consideration to the voters to induce the voters to vote for the respondent and refrain from voting for other candidates. Further, in para. 4.2, it states that the agent of the respondent has committed bribery by doing the same act where both actions are an offence under s. 10(a), (c), (d), (e), (g), or (h) of the EOA and punishable under s. 11(1)(b) of the same Act.

[8] Next, para. 4.3 of the election petition states that the respondent committed an act of treating the voters to corruptly influence them to vote for the respondent and refrain from voting for the appellant. Paragraph 4.4, further alleged that the agent of the respondent has committed the same act which is an offence under s. 8 of the EOA and punishable under s. 11(1)(b) of the same Act.

[9] The particulars of the alleged offence of bribery and treating are laid down in paras. 7 and 8 of the election petition.

[10] On 20 January 2023, the respondent filed a notice of preliminary objection to the election petition on the following grounds:

(i) the election petition was filed out of time, as it was in breach of ss. 38(1)(a) and 38(1)(b)(ii) of the EOA;

(ii) the appointment of the appellant's advocate and solicitors were in breach of r. 9 of the Election Petition Rules 1954 ("EPR");

(iii) the appellant had failed to satisfy the requirement of s. 32(a) and (c) of the EOA and r. 4(1)(b) of the EPR; and

(iv) the appellant had failed to name the returning officer and the Election Commission as respondents in the election petition.

The Decision Of The Election Judge

[11] On the issue of whether the election petition was filed out of time, the learned election judge held that the election petition was filed out of time as the election petition, which involves corrupt practice, must be filed within 28 days from the date of the payment or the act. Consequently, the Court has no jurisdiction to hear the election petition. In coming to this decision, the election judge was of the view that the proviso in s. 38(1)(a) of the EOA must be read independently of s. 38(1) of the Act as the proviso qualifies the main section. To interpret it otherwise would render the proviso redundant. The learned election judge cited the Federal Court case of *Chor Phaik Har v. Farlim Properties Sdn Bhd* [1994] 4 CLJ 285 to support his view.

[12] As regards the appointment of the appellant's counsels, the notices of appointment of the counsels were not duly stamped with the duty payable for such document and, therefore, in breach of r. 9 of the EPR. The learned election judge accepted the submission by the appellant that there is no requirement under the Stamp Act 1949 for the stamping of such notices. As such, this ground of preliminary objection was dismissed.

[13] The learned election judge further held that the appellant had failed to satisfy the requirement of s. 32(a) and (c) of the EOA and r. 4(1)(b) of the EPR. It was the election judge's view that the appellant had failed to plead the 'appointment' of the agent in the election petition which was said to have acted for the respondent in committing the corrupt practice. As such, the appellant had not established the nexus or connection between the agent and the respondent. The election judge further held that the appellant had failed to briefly state the facts and grounds relied on to sustain the prayer which infringed r. 4(1)(b) of the EPR. In addition, it was held that there was a lumping together of the grounds in s. 32(a) and (c) which is contrary to r. 4(2) of the EPR that, *inter alia*, requires the election petition to be confined to a distinct portion of the subject.

[14] Lastly, the learned election judge held that there is no requirement for the election commission or the returning officer to be named as respondents in the case as the appellant's complaints in the election petition were not concerned with the conduct of the election but with corrupt practices by the respondent or her agent.

[15] Based on the two grounds of the preliminary objection raised by the respondent, that is, the time limit under s. 38(1)(a) of the EOA and the non-compliance with s. 32(a) and (c), as well as r. 4(1) (b) of the EPR, the election judge allowed the preliminary objection and struck out the election petition.

The Kemaman's Appeal

[16] In the Kemaman's appeal, the appellant was a registered voter and election agent for the Barisan Nasional ("BN") candidate for the GE15 for the Parliamentary Constituency of Kemaman (P040), Dato' Seri Hj Ahmad bin Said. The respondent, Che Alias bin Hamid, a candidate from Parti Islam SeMalaysia ("PAS") was declared the winner in the election which was held on 15 November 2022 and 19 November 2022 with a majority of 27,179 votes. The result of the election was published in the *Gazette* on 14 December 2022.

[17] On 3 January 2023, the appellant filed an election petition under s. 32(c) of the EOA for corrupt practice allegedly committed by the respondent's agent.

[18] In para. 5.1 of the election petition, the appellant states that the respondent committed an act of bribery by giving monies to the voters to induce them to vote for the respondent and to refrain from voting for other candidates. In para. 5.2, the appellant alleged that the agent of the respondent also committed the same act and both actions are an offence under s. 10(a) of the EOA and punishable under s. 11(1)(b) of the same Act.

[19] The detailed particulars of the alleged bribery were laid down in paras. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 of the election petition.

[20] In the election petition, the appellant prayed for declarations that the respondent was not duly elected in the GE15 for the Parliamentary Constituency of Kemaman and that the said election was to be declared void.

[21] Thereafter, the respondent raised a preliminary objection to the election petition before the election judge on the following grounds:

(i) the appellant had failed to comply with the timeline under s. 38(1)(a) of the EOA;

(ii) the appellant failed to comply with the mandatory requirement of s. 32(a) of the EOA and r. 4(1)(b) of the EPR;

(iii) the appointment of the appellant's counsel was invalid as it was in breach of r. 9 of the EPR; and/or

(iv) the service of the election petition was defective and invalid for non-compliance with r. 15 of the EPR.

The Decision Of The Election Judge

[22] On the issue of s. 38(1)(a), the election judge held that the proviso that allows the appellant to file the election petition within 28 days after the payment of the corrupt practice does not apply in the present case as the act was before the date the election's result was published in the *Gazette*. As such, the date to file the election petition was 21 days after the said publication.

Thus, the filing of the election petition was within the period under s. 38(1) of the EOA. The cases of *Mahdi Hassan v. Ahmad Zahid Hamidi* [2014] 1 LNS 183 and *Raymond Ahuar v. Arthur Joseph Kurup & Ors* [2018] 1 LNS 1914 were relied upon by the election judge to support his decision.

[23] Next, the election judge found that the appellant had failed to state in the election petition, firstly, who had given the bribe monies to the voters as mentioned in para. 7, either the respondent himself, the agent, or a third party. As regards the act of bribery as stated in paras. 9 to 20, the election judge found, *inter alia*, that the appellant had failed to particularise the respondent's agent that gave the monies to the voters and the receivers of the said monies. Further, the appellant failed to establish that the receivers were voters for the Constituency and that the speech by the agents induced the voters to vote for the respondent and refrain them from voting for other candidates. In the circumstances, the election judge held that the appellant had failed to comply with the requirement of s. 32(a) of the EOA and r. 4(1)(b) of the EPR for not briefly stating the facts and grounds relied upon to sustain the prayer in the election petition.

[24] As regards the appointment of the appellant's counsel, the learned election judge was of the view that as there is no requirement under the Stamp Act 1949 to pay any stamp duty for the notice of appointment of counsel, therefore there was no infringement of r. 9 of the EPR.

[25] The last ground of the preliminary objection is the issue of defective service of the election petition, where the service was made by a chambering student. The election judge held that as long as the service was properly made under the law, the person who served the said petition is immaterial. The election judge found that the service made complied with r. 15(1) of the EPR and that this ground is without merit.

[26] Based on the non-compliance of s. 32(a) of the EOA and r. 4(1)(b) of the EPR, the election judge allowed the respondent's preliminary objection and struck out the appellant's election petition.

The Appeals Before This Court

[27] In the Masjid Tanah's appeal, the issues raised before us by the appellant were the timeline for the presentation of the election petition under s. 38(1) of the EOA and the sufficiency of the material facts and grounds relied on in the petition under s. 32(a) and (c) of the EOA and r. 4(1)(b) of the EPR. In the Kemaman's appeal, the appellant's appeal concerned only one issue which was the sufficiency of the material facts and grounds relied upon in the election petition. The issue is whether the requirement of r. 4(1)(b) of the EPR has been complied with.

A **The Masjid Tanah's Appeal**

The Timeline For The Presentation Of The Election Petition

[28] On this issue, counsel for the appellant submitted that the election judge erred in holding that the appellant's election petition was filed out of time as it was filed within the timeline required under s. 38(1) which is within 21 days of the date of publication of the result of the election in the *Gazette*. It was contended that proviso (a) of s. 38(1) has no application in the present case as the proviso is only applicable for cases where the corrupt practice was committed after the date of the said publication which is not so in the present case as the alleged act was before the date of the said publication. This interpretation, it was argued, is consistent with the keywords in the proviso which states "... since the date aforesaid". Reliance was placed on the following cases by election judge in *Mahdi Hassan* (*supra*), *Raymond Ahuar* (*supra*), *Yusuf Abdul Rahman v. Abdul Ajis Abdul Majeed & Anor* [2000] 5 CLJ 215, and *Mohamad Ali Mohamad v. Dr Mohd Aleef Yusof & Ors* [2022] 1 LNS 410.

[29] Conversely, counsel for the respondent submitted that the decision of the election judge in holding that the filing of the appellant's election petition was out of time is correct as the proviso in s. 38(1)(a) of the EOA is applicable, that is the appellant must file the election petition within 28 days from the date of the corrupt payment or act. In support of this contention, the following cases were cited, *Mohamad Sazali Kamilan v. Nurul Izzah Anwar & Ors* [2013] 9 CLJ 782; *Sani Miasin v. Yusof & Ors* [2021] 1 LNS 62 and *Asmara Abdul Rahman v. Musa Aman & Ors* [2019] 1 CLJ 75.

The Issue Of Whether The Election Petition Lack Sufficient Materials And Grounds

[30] As regards this issue, it was the submission of counsel for the appellant that the learned election judge erred in deciding that the election petition lacked sufficient materials and grounds relied on to support the petition and therefore infringed the provisions of s. 32(a) and (c) of the EOA and r. 4(1)(b) of the EPR. It was submitted that the election petition contained all the brief facts on the corrupt practice and the grounds relied on to sustain the prayer in the election petition. This includes the agent that acted for the respondent. Counsel for the appellant further submitted that other detailed particulars would be presented as evidence in the trial as provided under r. 5 of the EPR.

[31] In response, counsel for the respondent contended that the election petition was bereft of material particulars and grounds to sustain its prayer. The election petition, *inter alia*, failed to state the receiver and the location the payment was made, the number of voters that received the monies, and the manner the alleged action affects the result of the election. Further, the appellant failed to plead the relationship between the agent and the respondent and the particulars of the appointment of the agent.

[32] In addition, it was further submitted that in the election petition, the grounds for the offences under s. 32(a) and (c) were lumped together contrary to r. 4(2) of the EPR which requires the paragraph in the petition to be confined to a distinct portion of the subject. As such, it was submitted that the election petition was in breach of s. 32(a) and (c) of the EOA, and r. 4(1)(b) and 4(2) of the EPR.

The Kemaman's Appeal

[33] In this appeal, counsel for the appellant submitted that the learned election judge erred in holding that the election petition was lacking in sufficient material facts and grounds relied on to sustain its prayer. It was submitted that the material facts and grounds pleaded in the election petition are sufficient to constitute a cause of action of corrupt practices for the matter to be tried in a full trial.

[34] On the other hand, it was the respondent's counsel's submission that the election petition lacked material particulars to make out a case of corrupt practice. It was further submitted that the defect in the election petition resulted in the inability of the respondent to present his defence. The respondent's complaints on the election petition can be summarised as follows:

(i) the appellant failed to plead in the election petition, the detailed particulars of the respondent's agent and their appointment as the agent by the respondent;

(ii) the appellant failed to plead the time and places of the corrupt practices mentioned in the petition; and

(iii) the appellant failed to plead that the receivers of the alleged corrupt payments were registered voters of the Kemaman Constituency.

[35] In the circumstances, counsel for the respondent submitted that the learned election judge was correct in deciding that the appellant's election petition had failed to comply with s. 32(a) and (c) of the EOA and r. 4(1)(b) of the EPR and consequently struck out the election petition.

The Analysis And Decision Of This Court

[36] To begin with, it is settled law that the statutory requirements of election law are mandatory and must be observed strictly. This is because the parties' rights in the election and election dispute are governed by statute or special law unknown to common law or equity.

(see *Mahari Endut v. Dato' Hj Mat Razali Kassim, Pegawai Pengurus Pilihan Raya Bagi Kawasan Dewan Undangan Negeri N15 Ladang & Ors* [2009] 4 CLJ 488; [2009] 5 MLJ 153 (FC), *Khairuddin Abu Hassan v. Datuk Seri Hj Ahmad Hamzah & Ors And Another Appeal* [2019] 9 CLJ 315 (FC))

[37] Therefore, an election petition filed by the petitioner must comply or adhere strictly to the statutory requirements of the election law, and failing which, the petition is defective and subject to be struck out without going for a full hearing in a trial.

(see *Ahmad Jamaluddin Abd Majid v. Rafidah Aziz & Ors* [2009] 2 CLJ 785 (FC); *Wan Sagar Wan Embong v. Harun Taib* [2008] 5 CLJ 14 (FC) and *Gan Joon Zin v. Fong Kui Lun & Ors* [2004] 4 CLJ 729 (FC))

[38] We now move to the issues raised by parties before us for our determination.

The Issue Of The Timeline For The Presentation Of The Election Petition

[39] The timeline for the filing of an election petition is provided for under s. 38(1) of the EOA which states:

38. Time for presentation.

(1) *Every election petition shall be presented within twenty-one days of the date of publication of the result of the election in the Gazette*:

Provided that:

(a) an election petition questioning the return or the election *upon the ground of a corrupt practice and specifically alleging a payment of money* or other act to have been *made or done since the date aforesaid* by the person whose election is questioned or by an agent of the person or with the privity of the person or his election agent in pursuance or in furtherance of such corrupt practice may, so far as respects such corrupt practice, *be presented at any time within twenty-eight days after the date of such payment or act*;

(b) an election petition questioning the return or the election upon an allegation of an illegal practice may, so far as respects such illegal practice, be presented within the time following:

(i) at any time before the expiration of fourteen days immediately after the date of the publication in the *Gazette* of the notice required by s. 24 as to the election expenses of the person whose election is questioned;

(ii) if the election petition specifically alleges a payment of money or other act to have been made or done since the said date by the person whose election is questioned or by an agent of the person or with the privity of the person or of his election agent in pursuance or in furtherance of the illegal practice alleged in the petition, the petition may be presented at any time within twenty-eight days immediately after the date of such payment or other act. (emphasis added)

[40] It is trite that in the interpretation of a statute, where the provision is plain and unambiguous, the court must give effect to its literal or ordinary meaning. This court in *Dato' Ismail Kamus v. Pegawai Pengurus Pilihanraya (Zainal Abidin Azim) & Ors* [2005] 2 CLJ 237 cited the case of *Ang Thye Chin lwn. Chua Kow & Lagi* [1996] 1 CLJ 49 said this:

> *Pertama*, tugas Mahkamah bukan membuat undang-undang. Itu tugas Parlimen. *Tugas Mahkamah ialah memberi kesan kepada undang-undang yang dibuat oleh Parlimen sama ada ia bersetuju dengannya atau tidak.*
>
> *Kedua, jika undang-undang yang dibuat oleh Parlimen itu jelas tidaklah perlu bagi Mahkamah merayau ke negara-negara lain* untuk mencari autoriti untuk mentafsirkan peruntukan itu. *Ketiga*, jika terdapat penghakiman Mahkamah di negara ini, apatah lagi jika semua sekata dan bagi tempoh yang lama pula, kita tidak harus meninggalkannya untuk menerima pakai satu tafsiran baru yang dibuat oleh Hakim-Hakim di negara lain dalam memutuskan kes-kes di negara itu mengikut undang-undang negara itu, dan keadaan dan amalan negara itu.
>
> (emphasis added)

[41] Reverting to s. 38(1) of the EOA, its plain meaning is that every election petition be filed within 21 days of the date of publication of the election result in the *Gazette*. However, there is proviso (a) of s. 38(1) of the Act which involves corrupt practice and payment of monies, allowing the presentation of the election petition within 28 days from the date of the payment or act.

[42] Here, the dispute arose as to whether proviso (a) of s. 38(1) of the Act applies to actions of corrupt practice irrespective of the time it was committed. The appellant contended that the proviso only applies to cases of corrupt practice after the publication of the result in the Gazette whilst the respondent was of the view that it applies to all cases of corrupt practice even before the said publication. There are conflicting decisions by the election judges on this issue as can be seen in the authorities cited by both parties.

[43] In this regard, first and foremost, we need to emphasise here that a proviso of a section must be read with the section itself as the proviso, *inter alia*, qualifies the section. A section with a proviso that forms part of the section must be construed as a whole.

[44] In the House of Lords case of *Jennings And Another v. Kelly* [1940] AC 206, it was held as follows:

> **Where a section of an Act of Parliament contains a proviso**, there is no rule that the first part, which may be described as the enacting part, is to be construed without the reference to the proviso. **The section must be construed as a whole, each portion throwing light on the rest**.
>
> (emphasis added)

(see also *Gubay v. Kington* [1984] 1 WLR 163)

[45] *Bennion On Statutory Interpretation*, Fifth Edition, on pp. 723 and 725, states as follows:

> A proviso is a formula beginning 'Provided that ...', which is placed at the end of a section or subsection of an Act, or of a paragraph or sub-paragraph of a Schedule, and the intention of which is to narrow the effect of the preceding words.
>
> ...
>
> **In a case of a proviso, the usual rule applies that an Act is to be construed as a whole. A section containing a proviso is also to be construed as a whole, within the Act**. (emphasis added)

[46] In connection with this, we are not inclined to agree with the view of the election judge in Masjid Tanah's appeal that proviso (a) of s. 38(1) of the EOA must be read independently of the said section. The decision by this court in *Chor Phaik Har*'s case (*supra*) cited by the election judge does not support the view. In that case, Edgar Joseph Jr FCJ said this:

> *However, the words of the proviso must be read in their context. By this is meant, we must not only read the words of the proviso in the light of s. 322 as a whole but also in the light of the Code as a whole*. Thus, it was said by the Court in *Arataki Honey Ltd. v. Minister of Agriculture and Fisheries* [1979] 2 NZLR 311 at 316:
>
> > *The Act must be read as a whole and that all sections must be read bearing in mind the provisions of other sections*. It is not necessary for one section to refer specifically to another section before the first section can be construed as being subject to or overriding or in some other way qualifying the other section.
>
> So, also, in *Canada Sugar Refining Co v. The Queen* [1898] AC 735 Lord Davey said (at p. 741):
>
> > Every clause of a statute should be construed with reference to the context and other clauses in the Act, so far as, possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject matter. (emphasis added)

[47] The section must apply before the proviso of the section can have any application. Both must be read together. In other words, the proviso of a section must not be read in isolation from the said section. This court in *Tan Sri Eric Chia Eng Hock v. PP* [2007] 1 CLJ 565 further explained the application of a proviso as follows:

> This raises the question of whether art. 128(3) can be read as a proviso to art. 121(2)(a). In *Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha* AIR [1961] SC 1596 Hidayatullah J said that as a general rule *a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule*. In *Local Government Board v. South Stoneham Union* [1909] AC 57 Lord MacNaghten said that *a proviso can be a qualification of the preceding enactment which is expressed in terms too general to be quite accurate*.

The proper way to regard a proviso is as a limitation upon the effect of the principal enactment (see *Raj Rani v. Dwarka Nath* AIR [1933] Oudh 491). Its function is to except and deal with a case which would otherwise fall within the general language of the main enactment (see *Vedehi Saran v. Municipal Board, Kouch* [1978] All LJ 907). As *Bindra's Interpretation of Statutes*, 9th edn says at p 111:

> *A proviso, which is in fact and in substance a proviso, can only operate to deal with a case, which but for it, would have fallen within the ambit of the section to which it is a proviso*. The section deals with a particular field and the proviso excepts or takes out or carves out from the field a particular portion, and therefore it is perfectly true that *before a proviso can have any application, the section itself must apply*. A proviso is nothing but an exception to the enacting clause. Its object is to cut down or qualify something which has gone before it.
>
> (emphasis added)

[48] Now we revert to the proviso (a) of s. 38(1). For ease of reference, we reproduce the proviso below:

> (I) **Every election petition shall be presented within twenty-one days of the date of publication of the result of the election in the *Gazette***:
>
> Provided that:
>
> (a) an election petition questioning the return or the election **upon the ground of a corrupt practice** and **specifically alleging a payment of money** or other act to have been **made or done since the date aforesaid** by the person whose election is questioned or by an agent of the person or with the privity of the person or his election agent in pursuance or in furtherance of such corrupt practice may, so far as respects such corrupt practice, **be presented at any time within twenty-eight days after the date of such payment or act**;
>
> (emphasis added)

[49] It is clear that the words of proviso (a), *inter alia*, an election petition on the ground of corrupt practice and payment of money made or done since the date aforesaid must be filed within 28 days after the date of the payment or act. The keywords are the payment or act done 'since the date aforesaid'. Reading the proviso together with s. 38(1) of the EOA, which states that every election petition must be filed within 21 days of the date of publication of the result of the election in the *Gazette*, it is undoubtedly, that the words 'since the date aforesaid' in proviso (a) refer to the date of publication of the election's result in the *Gazette*.

[50] It is the court's duty to give effect to the words in the proviso as enacted by Parliament, otherwise, the words 'since the date aforesaid' are meaningless or otiose. Certainly, Parliament does not legislate or act in vain. In the words of Eusoffe Abdoolcader SCJ in *Foo Loke Ying & Anor v. Television Broadcasts Ltd & Ors* [1985] 1 CLJ 511; [1985] CLJ (Rep) 122:

A *The Court however is not at liberty to treat words in a statute as mere tautology or surplusage unless they are wholly meaningless. On the presumption that Parliament does nothing in vain, the Court must endeavour to give significance to every word of an enactment, and it is presumed that if a word or phrase appears in a statute, it was put there for a purpose and must not be disregarded*. In *Quebec Railway, Light, Heat and Power Co. Ltd. v. Vandry* [1920] AC 662, Lord Sumner in
B delivering the judgment of the Judicial Committee said (at p. 676):

> Secondly, there is no reason why the usual rule should not apply to this as to other statutes – namely, that effect must be given, if possible, to all the words used for the legislature is deemed not to waste its words or to say anything in vain.
>
C (emphasis added)

[51] We are unable to agree with the election judge in the Masjid Tanah's appeal that the failure to read proviso (a) and s. 38(1) independently would make the words "be presented at any time within 28 days after the date of such payment or act" in the proviso redundant or meaningless. Based on our
D reasoning alluded to earlier, proviso (a) of s. 38(1) of the EOA applies to any election petition on the grounds of corrupt practice and payment of monies after the date of the publication of the election's result in the *Gazette*. In such cases, the election petition can be filed within 28 days after the date of such payment or act. This is also consistent with s. 10 of the EOA which makes
E an offence for bribery even after an election if such action induced the voters to vote for the respondent and refrain them from voting for other candidates.

Section 10(a) of the EOA states:

> The following persons shall be deemed guilty of the offence of bribery:
>
F (a) every person who, before, during, or **after an election**, who directly or indirectly, by himself or by any other person on his behalf, **gives**, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure, **any money** or valuable consideration to or for **any elector or voter**, or to or for any person on behalf of any elector or voter or to or for any other person, to **induce any elector or voter to vote**
G **or refrain from voting, or corruptly does any such act as aforesaid on account of such elector or voter having voted or refrained from voting at any election**; (emphasis added)

[52] Therefore, the issue of redundancy about proviso (a) of s. 38(1) EOA as opined by the election judge in the Masjid Tanah's appeal does not arise.
H Thus, on the timeline for filing an election petition, we agree with the decision of the election judges in *Mahdi Hassan* (*supra*), *Raymond Ahuar* (*supra*), *Yusuf Abdul Rahman* (*supra*), *Mohamad Ali Mohamad* (*supra*), and also the election judge in the Kemaman's appeal.

[53] In the present appeal, the date of publication of the result of the
I election in the Gazette was 14 December 2022 and the election petition was filed on 3 January 2023. As such, the petition was filed within 21 days after the said publication as required under s. 38(1). In the circumstances, the election judge erred in applying proviso (a) of s. 38(1) and taking into account

the alleged bribery on 19 November 2022, the 28 days ended on 17 December 2022, and therefore ruled that the filing of the election petition on 3 January 2023 was out of time.

The Issue Of Sufficiency Of Material Facts And Grounds Relied On To Sustain The Prayer In The Election Petition Under Section 32(a) And (c) Of The EOA and Rule 4(1)(b) Of The EPR

[54] On the sufficiency of material facts and grounds, it is trite that the election petition must contain the brief facts and grounds relied upon as required under r. 4(1)(b) of the EPR which states:

> 4(1) An election petition shall contain the following statements:
>
> ...
>
> (b) it shall state the holding and result of the election, and **shall briefly state the facts and grounds relied on to sustain the prayer**.
>
> (emphasis added)

[55] Further, an election of a candidate can be declared void on the grounds as mentioned under s. 32(a) to (e) of the EOA, and for these appeals the relevant grounds relied on are s. 32(a) and (c) which states as follows:

> 32. **The election of a candidate at any election shall be declared to be void** on an election petition on any of the following grounds only which may be proved to the satisfaction of the Election Judge:
>
> (a) that **general bribery, general treating**, or general intimidation have so extensively prevailed that they may be reasonably supposed to have affected the result of the election;
>
> ...
>
> (c) that a **corrupt practice** or illegal practice was committed in connection with the election **by the candidate** or **with his knowledge or consent, or by any agent of the candidate**;
>
> (emphasis added)

[56] To comply with the requirement of r. 4(1)(b) of the EPR, the pleaded facts and grounds relied on must be sufficient to constitute a cause of action and make out a case against the respondent. In regard to the alleged offence of bribery or corrupt practice, what is pertinent is the brief facts that constitute the elements of the offence of bribery or treating and how the respondent has offended the law. This is pertinent for the respondent to answer the charge or charges against them.

(see also *Mohd Nazri Hj Din v. Dato' Seri Raja Ahmad Zainuddin Raja Hj Omar & Ors* [2009] 3 CLJ 221 (FC) and *Tan Sri Joseph Kurup v. Danny Anthony Andipai; Attorney General, Malaysia (Intervener)* [2009] 3 CLJ 523; [2009] 3 MLJ 1 (FC))

A

The Masjid Tanah's Appeal

The Alleged Bribery Offence Under Section (10)(a)

[57] In respect of the Masjid Tanah's appeal, the pleaded facts for the alleged bribery offence by the respondent or with her knowledge or with her consent or through her agents were laid down in para. 7 of the election petition. We find it necessary to reproduce the said paragraph:

B

> 7.1 Pada hari pengundian *19 November 2022* dari jam di antara *9.00 pagi hingga 5.00 petang* satu *pemberian dan/atau penyogokan wang* berjumlah di antara RM50.00, RM100.00 dan RM300.00 di dalam sampul surat berwarna putih ("wang tersebut") telah berlaku sebegitu berleluasa *kepada pemilih-pemilih dan/atau pengundi-pengundi berdaftar* dan/atau pengundi luar yang balik mengundi di *bahagian pilihan raya Parlimen Masjid Tanah oleh Responden atau dengan pengetahuan Responden atau persetujuan Responden atau arahan Responden*.
>
> 7.2 Pada hari pengundian *19 November 2022* dari jam di antara *9.00 pagi hingga 5.00 petang* seorang *ejen kepada Responden* yang bernama *Akmal Zahin Bin Zainal Tahir* ("Akmal Zahin") Pengerusi Tetap Armada Parti Pribumi Bersatu Malaysia yang merupakan komponen dalam parti Perikatan Nasional yang mewakili Responden telah *memberikan wang* berjumlah RM50.00, RM100.00 dan RM300.00 yang diisikan dalam sampul surat bewarna putih ("wang tersebut") kepada pemilih-pemilih dan/atau *pengundi-pengundi berdaftar* dan/atau pengundi luar yang balik mengundi di bahagian pilihan raya Masjid Tanah sebegitu berleluasa *di perkarangan rumah yang beralamat di SU 1232, Jalan Masjid Tanah Ria 5, Taman Masjid Tanah Ria, 78300 Masjid Tanah, Melaka* ("Rumah yang terletak di belakang Pizza Hut Masjid Tanah") yang didaftarkan di atas nama *Suhaida Binti Shahardin*.
>
> 7.3 Pada hari pengundian 19 November 2022 dari jam di antara *9.00 pagi hingga 5.00 petang* seorang lagi *ejen kepada Responden* yang bernama *Noorashimah Binti Nordin* ("Noorashimah") juga *telah memberikan wang* berjumlah RM50.00, RM100.00 dan RM300.00 yang diisikan dalam sampul surat bewarna putih ("wang Tersebut") kepada pemilih-pemilih dan/atau *pengundi-pengundi berdaftar* dan/atau pengundi luar yang balik mengundi di bahagian pilihanraya Parlimen Masjid Tanah sebegitu berleluasa *di dalam rumah yang beralamat di SU 1232, Jalan Masjid Tanah Ria 5, Taman Masjid Tanah Ria, 78300 Masjid Tanah Melaka* ("rumah yang terletak di belakang Pizza Hut Masjid Tanah'') yang didaftarkan di atas nama *Suhaida Binti Shahardin*.
>
> 7.4 Wang tersebut telah diberikan kepada pemilih-pemilih dan/atau pengundi-pengundi berdaftar dan/atau pengundi luar yang balik mengundi di Bahagian Pilihan Raya tersebut *bagi mendorong mereka untuk mengundi Responden yang merupakan calon Perikatan Nasional ("PN")* di Bahagian Pilihan Raya tersebut. (emphasis added)

C D E F G H I

[58] The material allegation of facts in para. 7.1 is that on 19 November 2022, between 9am to 5pm, payments of monies of either RM50, RM100, or RM300 were given to the registered voters of the Masjid Tanah

Parliamentary Constituency by the respondent or with her consent or knowledge or upon her instruction. The purpose of giving the monies was to induce the voters to vote for the respondent as stated in para. 7.4

[59] Paragraph 7.2 read with para. 7.4, on the other hand, alleged that at the same time and date, in front of a house at SU 1232, Jalan Masjid Tanah Ria 5, Taman Masjid Tanah Ria, the respondent's agent, Akmal Zahin gave the same amount of monies to the registered voters in the Constituency for them to vote for the respondent.

[60] Next, para. 7.3 read with para. 7.4, states that at the same time, date, and place, another respondent's agent, Noorashimah, gave the same amount of monies to registered voters to induce them to vote for the respondent.

[61] Three registered voters who have been identified for receiving the monies as mentioned in para. 7.11 were Junaidah binti Abdul Rahim, Mohd Hafiz Iskandar bin Mohd Jamil, and Bukhari bin Md Noor.

[62] Having considered the material facts in the election petition as mentioned above, we find that the facts and grounds pleaded are sufficient to constitute a cause of action on the offence of bribery under s. 10(a) of the EOA. All the necessary elements for the said offence have been pleaded which are at the date, time, and place, the respondent and through her agent had given monies to the registered voters of the Masjid Tanah Parliamentary Constituency to induce them to vote for the respondent. There is no ambiguity in the charges against the respondent as pleaded for the respondent to answer the case against her in the trial. Thus, the election judge has erred on this issue.

The Alleged Offence Of Treating Under Section 8 Of The EOA

[63] In the election petition, the relevant pleaded facts for the offence of treating are in para. 8 which, *inter alia*, states:

> 8.1 *Responden secara sendiri* dan/atau *wakilnya* dan/atau *ejennya* melalui satu hantaran pada 30 November 2022 di dalam media TIK TOK @ emysamsudin telah *menjemput semua pemilih dan/atau pengundi* bersama famili di dalam *bahagian Parlimen Masjid Tanah* ke *Kenduri Kesyukuran* Jentera dan Sukarelawan anjuran Parti Perikatan Nasional yang diwakili Responden dan PDM Pasir Gembur yang akan diadakan pada *3hb Disember 2022 jam 8.30 malam* di *Dataran Pasir Gembur*.
>
> 8.2 Sehubungan dari jemputan tersebut *satu penjamuan besar-besaran* yang diberi nama *Majlis Kenduri Kesyukuran* Jentera dan Sukarelawan ("Kenduri Kesyukuran tersebut") *anjuran Responden* di bawah Parti Perikatan *Nasional yang diwakilinya telah diadakan untuk pengundi dan/atau pemilih berdaftar* di dalam bahagian pilihan raya Parlimen Masjid Tanah *pada 3hb Disember, 2022 jam 8.30 malam di Markas PAS Pasir Gembur* dalam *bahagian pilihan raya Parlimen Masjid Tanah* yang telah dihadiri secara beramai-ramai oleh pengundi dan atau pemilih di dalam bahagian pilihan raya Parlimen Masjid Tanah.

A 8.3 Di antara aktiviti Kenduri Kesyukuran tersebut adalah seperti berikut:

(a) *Jamuan makan malam* secara buffet dan berhidang nasi, ayam goreng, kari, buah-buahan;

(b) *Cabutan bertuah barangan dan hamper*;

B (c) Alunan qasidah;

(d) Penyerahan borang keahlian Parti Peribumi Bersatu Malaysia.

8.4 Diantara pengundi dan/atau pemilih yang telah hadir dan/atau dikenalpasti hadir ke penjamuan besar-besaran tersebut adalah:

C (a) Khairudin bin Hj Bakar (No. K/P: 700723-04-5593)

(b) Baharudin bin Bakar (No. K/P: 690217-04-5367)

(c) Mohd Zaini bin Bakar (No. K/P: 731210-04-5151)

8.5 Penjamuan besar-besaran dan cabutan bertuah yang dihadiri pemilih-pemilih dan pengundi-pengundi berdaftar di dalam Bahagian pilihan raya D Parlimen Masjid Tanah pada 3hb Disember, 2022 telah didaftar sebelum keputusan Pilihanraya tersebut diwartakan telah dipengaruhi dan didorongi untuk mengundi Responden seperti berikut:

(a) *untuk mempengaruhi dan mendorong secara rasuah* secara berterusan (continuously) selepas penyogokan yang diberi pada 19hb E November 2022 untuk *pemilih-pemilih dan/atau pengundi-pengundi berdaftar di bahagian pilihan raya Parlimen Masjid Tanah untuk memberikan undi kepada Responden*;

(b) *untuk mempengaruhi dan mendorong secara rasuah* secara berterusan (continuously) selepas penyogokan yang diberi pada 19hb F November 2022 untuk *pemilih-pemilih dan/atau pengundi-pengundi* berdaftar di bahagian pilihan raya Parlimen Masjid Tanah untuk *memberikan undi kepada Responden* apabila petisyen pilihanraya di bawa ke Mahkamah Pilihanraya bagi mencabar keputusan Pilihanraya tersebut.

G (c) Secara rasuah *sebagai penghargaan kepada pemilih-pemilih dan/atau pengundi-pengundi berdaftar* di bahagian pilihan raya Parlimen Masjid Tanah *yang telah memberikan undi kepada Responden*.

(emphasis added)

[64] The material facts that can be gleaned from paras. 8.1 to 8.5 of the H election petition alluded to above are that the respondent or through her agent had organised a feast and provided food and other valuable consideration for the registered voters of the Masjid Tanah Parliamentary Constituency to corruptly influence the voters to vote for the respondent. The place, time, and date were pleaded and three registered voters who I attended the feast are specifically mentioned in para. 8.4 who were Khairudin bin Hj Abu Bakar, Baharuddin bin Bakar and Mohd Zaini bin Bakar.

[65] In the circumstances, we find that the material facts pleaded in the election petition, if proven, were sufficient to establish the offence of treating under s. 8 of the EOA. All the elements of the offence of treating and how the offence was allegedly committed, we find, were sufficiently pleaded. For ease of reference, s. 8 of the EOA reproduced:

> 8. **Treating.**
>
> Every person who, **corruptly, by himself or by any other person,** either **before, during or after an election**, directly or indirectly gives or **provides or causes to be given or provided,** or is accessory to the giving or providing, or pays or engages to pay wholly or in part, the expense of giving or providing **any food**, **drink**, refreshment **or provision,** or any money or ticket or other means or device to enable the procuring of any food, drink, refreshment or provision, to or for any person **for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at such election** or on account of any such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at such election, and every elector or voter who corruptly accepts or takes any such food, drink, or refreshment or provision or any such money or ticket or who adopts such other means or device to enable the procuring of such food, drink, refreshment or provision **shall be guilty of the offence of treating.**
>
> (emphasis added)

[66] In the circumstances, it is our considered view that the appellant's election petition has not suffered any defect of insufficient material facts or grounds that infringed r. 4(1)(b) of the EPR and fulfilled the requirements of s. 32(a) and (c) of the EOA. As such, the election judge erred in his decision that there were insufficient material particulars in the appellant's petition.

[67] On the issue of agency, counsel for the respondent submitted that the facts or particulars of appointment or employment of the agent were not pleaded in the petition, making the petition defective. The Federal Court case of *Wan Sagar Wan Embong* (*supra*) was cited to support the contention.

[68] In the present appeal, two agents of the respondent, Akmal Zahin bin Zainal Tahir and Noorashimah binti Nordin were named in the petition and the pleading in paras. 7.2 and 7.3 detailed their involvement in the corrupt practice as agents of the respondent. The offences of treating under s. 8 of the EOA and bribery under s. 10 of the same Act, *inter alia*, make it an offence for every person who corruptly, by himself or by any other person to commit the corrupt practice. What was pleaded in the petition, *inter alia*, was that the corrupt practices were committed not only by the respondent but, by other persons that were the agents of the respondent, Akmal Zahin and Noorashimah. We find that the material facts were sufficiently pleaded for the respondent to answer the case against her under ss. 8 and 10 of the EOA.

[69] The word 'agent' does not appear in ss. 8 or 10 of the EOA, if the agency is pleaded in an election petition, it merely falls under the category of 'by any other person' envisaged under those sections. That is the reason why the scope of an agency under the election law is wider compared with an ordinary agency. This is lucidly explained by Raja Azlan Shah (as His Royal Highness then was) in *Ali Amberan v. Tunku Abdullah* [1969] 1 LNS 6; [1970] 2 MLJ 15b in the following words:

> Inspired and guided by the English and Indian election law, I take the view that the rule of extended scope of agency holds good in our election law; any other view would tend to make it impossible to preserve the purity and freedom of elections. Accordingly *a candidate at an election is responsible for the acts of agents who are not and would not necessarily be agents under the common law of agency. Therefore a political party and its prominent members who set up the candidate and with his consent, either expressly or by necessary implication, sponsor his cause and work actively to promote his election, may aptly be regarded the "agents'" of the candidate for election purposes.* (emphasis added)

[70] In the circumstances and the present appeal, whether Akmal Zahin and Noorashimah were the respondent's agents with the express consent or by necessary implication are matters of evidence to be established during the trial and evidence need not be stated in the election petition as provided under r. 5 of the EPR.

[71] We also need to emphasise here that there is no requirement under the election law in particular r. 4(1)(b) of the EPR that the election petition must contain the particulars of how the petitioner's agent was appointed. What is required, *inter alia*, is to state briefly the facts and grounds relied on to sustain the prayer. Thus, if there is no such requirement, there cannot be any breach of the law. The analogy can be made from the decision of this court in the case of *Lee Kew Sang v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 3 CLJ 914 which states as follows:

> That being the law, it is the duty of the courts to apply them. So, in a *habeas corpus* application where the detention order of the Minister made under s. 4(1) of the Ordinance or, for that matter, the equivalent ss. in ISA 1960 and DD(SPM) Act 1985, *the first thing that the courts should do is to see whether the ground forwarded is one that falls within the meaning of procedural non-compliance or not. To determine the question, the courts should look at the provisions of the law or the rules that lay down the procedural requirements. It is not for the courts to create procedural requirements because it is not the function of the courts to make laws or rules. If there is no such procedural requirement then there cannot be non-compliance thereof. Only if there is that there can be non-compliance thereof and only then that the courts should consider whether, on the facts, there has been non-compliance.* (emphasis added)

[72] The decision of this court in *Wan Sagar*'s case can be distinguished as in that case, the facts to show the corrupt practice committed by the agent of the first respondent were not pleaded, unlike the present appeal.

This is mentioned in para. 23 in the grounds of judgment of that case as follows:

> [23] Based on the factual circumstances of the present case *we find the learned Election Judge is correct in requiring the appellant to plead facts and grounds to show that the corrupt practice was committed, inter alia by any "agent" of the first respondent. This, the appellant has failed to do so.* (emphasis added)

[73] In the present case before us, the failure to state the particulars of the manner agents of the respondent were appointed or employed, we find, is not fatal or infringed any provision of the election law that makes the election petition defective.

[74] Further, we find, there is no issue of overlapping of the subject matter in the election petition that infringed r. 4(2) of the EPR which states:

> The petition shall be divided into paragraphs, each of which, as nearly as may be, **shall be confined to a distinct portion of the subject** and every paragraph shall be numbered consecutively, and no costs shall be allowed for drawing or copying any petition not substantially in compliance with this rule unless otherwise ordered by the court or a Judge.
>
> (emphasis added)

[75] As alluded to earlier, the alleged offences against the respondent are corrupt practices which are treating, an offence under s. 8, and bribery, an offence under s. 10 of the EOA. The alleged material facts on the offence of bribery were placed under para. 7 of the election petition, in particular paras. 7.1, 7.2, 7.3, and 7.4. and the relevant material facts for the offence of treating were pleaded separately under para. 8 and in particular, paras. 8.1, 8.2, 8.3, 8.4, and 8.5. Having considered the petition in totality, including paras. 7 and 8, we find, the petition did confine to a distinct portion of the subject. As such, the contention that the petition infringed r. 4(2) of the EPR is without merit.

The Kemaman's Appeal

[76] In the Kemaman's appeal, the grounds to declare the election result of the Kemaman Parliamentary Constituency void is corrupt practices where it was pleaded in the election petition that the voters were bribed by the respondent's agents for them to vote for the respondent. The bribery was allegedly given by the agents as particularised in paras. 7 and 9 of the election petition.

[77] The relevant facts in para. 7 are as follows:

> 7.1 Pada sekitar 18 November 2022, seorang pengundi atau pemilih di dalam Bahagian Pilihan Raya tersebut yang bernama Md Noordin bin Awang (No. KP: 581017-03-5479) ("En Noordin") telah menerima sejumlah wang **dari ejen PAS** untuk mendorong En Noordin bagi mengundi Responden semasa PRU15.

A 7.2 Semasa PRU15, seorang lagi pengundi atau pemilih di dalam Bahagian Pilihan Raya tersebut yang bernama Mohd Faizol bin Md Noordin (No. KP: 900620-11-5671) ("En Faizol") telah mengakui bahawa beliau dan beberapa ahli keluarga beliau yang merupakan pengundi-pengundi berdaftar di Bahagian Pilihan Raya tersebut ada menerima sejumlah wang dalam lingkungan RM200.00-RM600.00 dari **ejen Responden**. Pemberian
B wang ini adalah bagi mendorong En Faizol untuk mengundi Responden semasa PRU15.

7.3 Semasa PRU15, dua orang pengundi atau pemilih berdaftar di Bahagian Pilihan Raya tersebut ("Dua orang pengundi tersebut") ada menerima sejumlah wang dari **ejen kepada Responden**.

C 7.4 Maklumat berkenaan dua orang pengundi tersebut adalah seperti berikut:

(i) Zawiah binti Muhammad (No. KP: 830220-11-5700); dan

(ii) Muhammad Farhan Haikal bin Md Noordin (No. KP: 990827-06-
D 5343)

7.5 Sogokan wang ini yang telah diberikan oleh **ejen-ejen kepada responden** atas sebab untuk:

(i) memastikan pengundi-pengundi berdaftar tersebut untuk mengundi Responden semasa PRU15 dan bukan calon-calon lain yang juga
E bertanding di Bahagian Pilihan Raya tersebut;

(ii) memastikan kemenangan buat Responden di Bahagian Pilihan Raya tersebut semasa PRU15; dan

(iii) **ejen-ejen kepada Responden** ini merupakan pekerja parti PAS yang bertugas semasa PRU15 untuk memenangkan PAS dan Responden
F di Bahagian Pilihan Raya tersebut. (emphasis added)

[78] Having analysed the allegation of facts in para. 7 above, we find that the missing link to establish the cause of action against the respondent for the offence of bribery under s. 10 of the EOA is the failure to identify the alleged agents of the respondent. As s. 10, *inter alia*, makes it an offence for the
G respondent by any other person, including the agents, to give bribe monies, a close nexus or relationship between the agent and the respondent needs to be shown. The identity of the agent has to be pleaded to enable the respondent to answer the allegation and the opportunity to refute them for being the respondent's agent. The omission to name the respondent's agent,
H we find makes the facts pleaded insufficient to sustain the prayer required under r. 4(1)(b) of the EPR.

(see also *Mohd Nazri Hj Din v. Dato' Seri Raja Ahmad Zainuddin Raja Hj Omar & Ors* (*supra*) and *Mohd Zaid Ibrahim v. P Kamalananthan Panchanathan & Ors* (*supra*), *Re Pengkalan Kota Bye-Election Teoh Teik Huat v. Lim Kean Siew*
I *& Anor* [1981] 1 LNS 1)

[79] In the election petition, the other corrupt practices pleaded are found in para. 9, which essentially alleged that the respondent through his agents had given bribe monies to the voters in several ceremonies held in the Parliamentary Constituency of Kemaman to induce the voters to vote for the respondent.

[80] The ceremonies where the bribe monies were allegedly given to the voters are as follows:

(i) "Majlis Pengagihan Bantuan One-Off Ibu Tunggal, Orang Kurang Upaya, Pencen Rakyat DUN Chukai di Dewan Sri Amar, Kemaman."

As pleaded in para. 9 of the election petition, in this ceremony which was held on 15 November 2022, during the campaign period of the GE15, YB Hanafiah bin Mat, member of Terengganu State Legislative Assembly for Chukai, acted as an agent of the respondent gave monies to the registered voters of the Kemaman Parliamentary Constituency who attended the ceremony to induce them to vote for the respondent.

(ii) "Majlis Penyerahan i-Belia di Dewan Sri Amar, Kemaman pada 15 November 2022"

In para. 10, it was pleaded that on 15 November 2022, YB Hanafiah as the agent of the respondent gave RM150 to the registered voters to induce them to vote for the respondent.

(iii) "Majlis Penyerahan i-Siswa di Dewan Sri Amar, Kemaman pada 17 November 2022"

In para. 11 of the election petition, it states that on 17 November 2022, YB Hanafiah as an agent of the respondent gave RM150 to the registered voters so they vote for the respondent.

(iv) "Majlis Penyerahan i-Belia di Dewan Sri Amar, Kemaman pada 16 November 2022"

In the petition, para. 12, it was pleaded that on 16 November 2022, YB Ab Razak bin Ibrahim, member of Terengganu State Legislative Assembly for Air Putih, as an agent of the respondent gave RM150 to the registered voters who attended the ceremony to induce them to vote for the respondent.

(v) "Majlis Penyerahan i-Siswa di DITC Teluk Kalong pada 17 November 2022"

Further, it was pleaded in para. 17 that on the same date, 17 November 2022, YB Hishamuddin Abdul Karim, member of Terengganu State Legislative Assembly for Tepuh, as an agent of the respondent, gave RM150 to the registered voters who attended the ceremony to induce them to vote for the respondent.

A (vi) "Majlis Penyerahan i-Belia di Kompleks Paya Lasir pada 14 November 2022"

In para. 18, the appellant pleaded that on 14 November 2022, during the campaign period of the GE15, YB Wan Sukairi Wan Abdullah, member of Terengganu State Legislative Assembly for Wakaf Mempelam, as an agent of the respondent gave RM150 to the registered voters that attended the ceremony to induce them to vote for the respondent.

(vii) "Majlis Penyerahan i-Belia di Dewan Sivik Kerteh pada 16 November 2022"

Next, in para. 19 of the petition, it was pleaded on 16 November 2022, during the campaign period of GE15, YB Saiful Azmi, member of Terengganu State Legislative Assembly for Kemasik, an agent of the respondent, gave RM150 to the registered voters who attended the event to induce them to vote for the respondent.

(viii) "Majlis Penyerahan i-Belia di Dewan Sivik Kerteh pada 17 November 2022"

In para. 20 of the petition, it was pleaded that on 17 November 2022, during the campaign period of GE15, YB Saiful Azmi, an agent of the respondent, gave RM150 to the registered voters of the Parliamentary Constituency of Kemaman who attended the event to induce them to vote for the respondent.

(ix) "Program Bersama Menteri Besar Terengganu"

It was also pleaded in paras. 13 to 16 that on 13 November 2022, in this event, RM600 was given to 2121 attendees and RM150 was given to 517 single mothers and 57 pensioners to induce them to vote for the respondent.

[81] Having considered the pleaded facts in the election petition, it is our view that in respect of all the ceremonies alluded to above, except "Program Bersama Menteri Besar Terengganu", the elements of bribery and agency were pleaded sufficiently. The time, place, and the respondent's agent have been named. The payments of monies to registered voters to induce them to vote for the respondent were also specified clearly. Further, the group of receivers of the alleged corrupt payments has also been identified, they were the attendees of the respective event. The case against the respondent was clearly pleaded and can be answered by the respondent without any confusion or difficulty.

Conclusion

[82] Based on the foregoing reasons, we unanimously allowed Appeal No. 01(i)-4-02/2023(M) ("the Masjid Tanah's appeal") and Appeal No. 02(i)-13-02/2023(T) ("the Kemaman's appeal). However, the Kemaman's appeal is only in respect of the allegation of facts in paras. 9, 10, 11, 12, 17, 18, 19, and 20 of the election petition. Both the election petitions be remitted to the respective High Court to be tried on their merits before a different election judge.